

Request

RE: 115 Shandon Park Belfast BT5 6NZ UPRN: 18507310

1. Would it possible to get a report on your outcome so that I can get an insight into the reasoning behind the decision of Domestic rating case you are intending to close as a “no change”.
2. I also wish to identify what guidance is provided to Land & Property Services employees when interpreting the relevant case law surrounding the decision as to whether a property is a ‘hereditament’.

Response

I can confirm the department holds some of the information requested.

1. A formal report was not completed. The owner/occupier of the property submitted an External Application for List Revision on 115 Shandon Park, dated 11th July 2022, confirming there had been a physical change; the property had been extended. On 12th September, the caseworker sent an email to explain the statutory assumption in regard to reasonable repair, as set out in Schedule 12 of the Rates Order (NI) 1977 and the Hereditament Test derived from case law. Additional information was provided by the applicant on 13th September to confirm the schedule of works being undertaken. Subsequent to an external inspection of the property on the 21st September 2022, the valuer emailed you and explained her consideration was that the property was a hereditament and should remain in the Valuation List.

Vacant domestic properties in Northern Ireland are fully rateable in accordance with rating legislation following the ‘Rating of Empty Homes’ (REH) which took effect in October 2011. The statutory assumption in regard to reasonable repair is set out in Schedule 12 of the Rates Order (NI) 1977 and the Hereditament Test derived from case law and advanced in numerous NI Valuation Tribunal cases. Considering the repair and character of the property and applying the Hereditament Test, it was the Valuer’s opinion that your property was a hereditament and liable for rates.

A Certificate of Valuation from the District Valuer was issued on 26th September and you can appeal the valuation by making an application to the Commissioner of Valuation within 28 days of the date of issue of the Certificate.

2. See LPS internal guidance 3/17 at Annex B below. Please note, this guidance dates from 2017 and is in the process of being reviewed to reflect recent decisions from the Northern Ireland Valuation Tribunal.

- 1.0 Purpose and Scope
- 1.1 This Guidance Note aims to provide instruction in situations where properties are affected by circumstances such as:
 - a) Natural disaster: Flooding, lightning, wind damage, landslide etc.
 - b) Man-made disaster: Fire, oil spillage, impact etc.
 - c) Properties undergoing refurbishment / renovation
- 1.2 This Guidance Note applies to domestic and non-domestic properties and details the approach to be applied where any of the circumstances listed above occur.
- 2.0 The Hereditament Test
- 2.1 Prior to the introduction of Rating of Empty Houses (REH) in October 2011 vacant domestic properties incurred no rate liability. When properties were impacted by natural or man-made disasters such as flooding or fire they would be noted as being vacant and no rate liability would occur until re-occupation occurred. Generally, there was no adjustment or revision of Capital Value.
- 2.2 Following the introduction of REH vacant domestic properties are fully rateable. Designating a flooded or fire damaged domestic property as vacant no longer removes the liability for rates.
- 2.3 Post REH LPS has dealt with a series of cases to the Northern Ireland Valuation Tribunal on derelict domestic properties or properties in very poor repair. These cases, along with similar cases determined by equivalent tribunals in GB, have developed criteria or tests that LPS applies in determining whether a property in poor repair or dereliction should remain on the Valuation List and liable for rates.
- 2.4 These judgements have resulted in the development of what has come to be known as The Hereditament Test. The key aspects of the hereditament test include —
- 2.5 Having regard to the character of the property and a reasonable amount of repair works being undertaken could the premises be occupied as a dwelling?
- 2.6 The English High Court in *Wilson v Coll* stated -

"The distinction is between a truly derelict property, which is incapable of being repaired to make it suitable for its intended purpose and repair which would render it capable again of being occupied for the purposes of a dwelling house. "

- 2.7 When dealing with vacant properties in poor condition LPS applies the hereditament test and if the undertaking of a reasonable amount of repair works would result in the premises being occupied as a dwelling, the property remains on the Valuation List and liable for rates. Only if a property is truly derelict and incapable of being repaired for its intended purpose would LPS remove the property from the List. LPS applies the hereditament test as a physical test not an economic / cost test. In other words the cost of the repairs and the ability of the owner / occupier to fund those repairs are not material considerations.
- 2.8 The assessment of properties impacted by natural or man-made disasters such as flooding or fire must also be considered against the hereditament test. Whether the damage or deterioration to a property occurs over a length period of time as a property is neglected or instantaneously with a flood or fire the criteria for determining rateability must be consistent.
- 2.9 As such, where a property has been flooded but a reasonable amount of repair works will allow the property to be occupied in the future as a dwelling, the hereditament test will be met and the property must remain in the List.
- 2.10 If the property has been so extensively damaged that a reasonable amount of repair works will not result in the property being occupied as a dwelling, then the hereditament test has not been met and the property should be removed from the list.
- 2.1 1 Similarly if a property is undergoing refurbishment the hereditament test must be applied. If the refurbishment consists of a reasonable amount of works to allow the property to be occupied as a dwelling, the hereditament test has been met and the property must remain in the List.
- 2.12 Where the refurbishment is so extensive that it is beyond a reasonable amount of repair works or the character of the property is being significantly changed then the hereditament test will not have been met.

2.13 Not an Economic Test

In *Wilson v Coll* the judgement confirmed that the hereditament test was not an economic one, stating —

"the crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake"

2.14 The test is a physical test not an economic / cost test.

3.0 Domestic Property

3.1 When a domestic property passes the hereditament test the statutory valuation assumptions are then applied, namely that 'the hereditament is in an average state of internal repair and fit out having regard to the age and character of the hereditament and its locality'

3.2 This means that whilst the property may well have been damaged and is in poor internal condition, under statute it is assumed that the internal repair and fit out is of average state. The property falls to be valued in tone with comparable properties.

3.3 For Domestic properties impacted by the situations set out at 1.1 above the potential outcomes are as follows -

- (a) The property meets the hereditament test and remains in the Valuation List. If there are no physical changes at the property the Capital Value will remain unchanged. If there are physical changes these will need to be taken into account in the Capital Value assessment
- (b) The property fails the hereditament test and it is considered that the damage to the property is so extensive that it will never be reinstated. In this situation the property will be deleted from the Valuation List.
- (c) The property fails the hereditament test but it is considered that it could still be reinstated. In this situation the AO functionality as set out at Appendix A should be followed.